Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 80-395

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

LESLIE MINYE
Petitioner,
v.
UNIVERSITY OF MICHIGAN, REGENTS OF THE UNIVERSITY OF MICHIGAN, EXECUTIVE COMMITTEE OF THE SCHOOL OF DENTISTRY OF THE UNIVERSITY OF MICHIGAN, AND SCHOOL OF DENTISTRY OF THE UNIVERSIY OF MICHIGAN,
Respondents.

SUPPLEMENTAL BRIEF PURSUANT TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

I.

WHETHER "EXCEPTIONAL CIRCUMSTANCES" CONSTITUTE ADEQUATE REASON TO RELIEVE PETITIONER FROM THE FINAL SUMMARY JUDGMENT IN FAVOR OF RESPONDENTS ENTERED ON APRIL 5, 1979, BY UNITED STATES DISTRICT JUDGE JAMES P. CHURCHILL?

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Leslie Minye, Petitioner, respectfully prays that a Writ of Certiorari or an Order granting relief from Summary Judgment in favor of Respondents issue to review the order of the United States Court of Appeals for the Sixth Circuit entered in this cause on June 17, 1980, or to reopen the case for further proceedings pursuant to Defendants' Motion for Summary Judgment before Judge James P. Churchill.

JURISDICTION

Jurisdiction is conferred upon this Court by 28 USC Section 1254 and Rule 22.6, Rules of the Supreme Court of the United States.

STATEMENT OF FACTS

Petitioner, Leslie Minye, has heretofore filed a Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit docketed in this Court on September 11, 1980. Thereafter, Respondents untimely filed a Brief in Opposition to Petition for Writ of Certiorari. Statements of facts by both Petitioner and Respondents appear therein. Petitioner asserts the following facts to establish exceptional circumstances providing a basis for relief pursuant to Federal Rules of Civil Procedure 60(b), (1), (2), and (6).

Petitioner's trial attorney, Mr. David Fried, in a grossly negligent manner, failed to properly prosecute Mr. Minye's cause at the trial level in that (1) he failed to recognize a probable conflict of interest which arose or, the probable appearance of impropriety, when he retained an attorney to write Plaintiff's Brief and Reply to Defendants' Motion for Summary Judgment in that the retained attorney was a co-author of a segment of a lawyers manual on the law of discovery with Mr. Davis, attorney for Defendants and Respondents herein; (2) he failed to raise a genuine issue of material fact by refusing or neglecting to attach an Affidavit from Dr. Richard P. Cohan, after having retained Dr. Cohan as an expert witness prior to the December 22, 1978 Motion Hearing and after having received a written critique from Dr. Cohan together with substantial review notes which should have been attached to

supplemental pleadings at the trial level. See Appendix A, B and C below; (3) he failed to attach written signed statements from patients of Mr. Minye for the purposes of raising a genuine issue of material fact, See Appendix D, E, F and G below; (4) he failed to attach pleadings, affidavits or seek discovery to establish a genuine issue of material fact based on the information provided to him by Mr. Minye that homosexual advances by a faculty instructor had been made and refused, probably causing the basis for his failure of a clinical dental course and providing the basis for discrimination, arbitrary and capricious or conspiratorial dismissal; (5) he failed to object to thirty (30) unverified exhibits attached to Defendants' Supplemental Brief; (6) he failed to bring to the Court's attention that Mr. Davis, Respondents' attorney, had not produced the "hard evidence" that Mr. Minye was indeed afforded due process after Mr. Davis represented to the Court that such evidence existed; (7) he willfully destroyed and discarded documents provided by Mr. Minye to Mr. Fried which reflected faculty evaluations by two instructors which were favorable which could have raised a genuine issue; (8) he failed to request an evidentiary hearing provided by law after due notice of Defendants' Motion for Summary Judgment and failed to pursue any further discovery to obtain affidavits in response thereto; (9) Mr. Fried failed to obey the directive of the trial court at the December 22, 1978 hearing requiring him to cross-reference testimony contained in the Depositions to raise a genuine issue, See Appendix H consisting of Pages 34 through 48 of the Appeal Brief filed in the U.S. Sixth Circuit Court of Appeals; (10) he failed to plead that a Summary Judgment, if any, should only be a Partial Summary Judgment in that Mr. Minye's national origin claim of discrimination and breach of contract claims were not

disposed of by the trial judge; (11) he failed to plead that the allegations contained in the Complaint constituted a statement of a cause of action pursuant to the Michigan Elliott-Larsen Civil Rights Act which would have increased Defendants' burden; (12) in his Answer to the Grievance filed against him by Mr. Minye, Mr. Fried willfully misrepresented that the written statements from the patients were made a part of the file when in fact they were never filed in the trial court, grossly and falsely represented to the Attorney Grievance Commission that the Sixth Circuit Court of Appeals in Cincinnati had sustained the trial court's ruling when in fact it was not affirmed until seven months after Mr. Fried made that representation and falsely implied therein that Mr. Minye could have attended other dental schools, and exercised unconscionable tactical judgment in the face of a Motion for Summary Judgment. See Appendix I; (13) he failed to file a Motion for Reconsideration within the time allowed; (14) he failed to request specific findings of facts pursuant to the Summary Judgment; (15) he failed to take the deposition of Defendants' Assistant to the President who had advised Mr. Minye that the only relief available would be to file suit; (16) he failed to serve a subpoena duces tecum upon Defendants to obtain verified copies of University records; (17) he failed to raise the legal argument pursuant to Defendants' Motion for Summary Judgment that *Greenhill v. Bailey*, 519 F 2d 5 (CA 8 1975) required expanded due process be afforded when a stigmatizing letter such as that attached to the Answer of Defendants is sent to other Universities, See Appendix J.; (18) he failed to advise Mr. Minye that the Defendants had offered a hearing regarding dismissal after suit was filed; (19) he failed to emphasize that Plaintiff had maintained the necessary grade point average, had

completed 95% of the requirements for graduation and he did not submit a copy of the National Board of Examination Certificate indicating that Mr. Minye had passed both parts and that all required clinical and written examinations were passed by Plaintiff, See Appendix K below; (20) and he failed to attach a copy of a letter from Plaintiff's employer or take his deposition in order to establish a genuine issue of material fact contradicting the negative evaluations by his instructors at the University of Michigan. See Appendix L.

Further extraordinary circumstances arose shortly after the Summary Judgment was issued. Mr. Minye obtained a letter from West Dental Laboratory, his former employer while a student indicating that Dr. Kahler, the instructor who was the alleged primary nemesis of Mr. Minye, had undoubtedly not only caused his dismissal but caused West Dental Laboratory to ask for his resignation because Dr. Kahler and associates, who themselves used West Dental Laboratory, refused to continue to use West after finding that Mr. Minye was working on prescriptions for gold and bridge assignments, some of which were done directly for Dr. Kahler without his knowledge. Previously there had been no complaints whatsoever. See Appendix M below.

As if such neglect was not enough, Mr. Minye retained the lawfirm of Durant & Durant prior to filing his Notice of Appeal on April 13, 1979. A specific retainer agreement was signed for the purposes of filing a Motion for Reconsideration of the Summary Judgment on or before April 24, 1979 for which Mr. Minye paid Three Thousand Dollars ($3,000); however, in contravention of the Agreement, the lawfirm filed no Motion for Reconsideration and in addition delayed

preparation of the Appeal Brief to such a degree that he was compelled to discharge Durant & Durant and retain current counsel to prepare and file said Brief on or before the deadline of November 5, 1979. See Appendix N below.

REASONS FOR GRANTING RELIEF FROM JUDGMENT

I.

In addition to the reasons stated in the Petition for Writ of Certiorari, "exceptional circumstances" prior to and after Summary Judgment justify setting aside the Summary Judgment pursuant to Rule 60(b),(1),(2), and (6), Federal Rules of Civil Procedure and Rule 22.6, Rules of the Supreme Court of the United States.

What should be of greatest concern is the apparent appearance of impropriety on the part of Mr. Fried in retaining separate counsel without notice to Mr. Minye for purposes of preparing the response in reply to Defendants' Motion for Summary Judgment and Brief when that separate counsel was a co-author with Defendants' attorney. When viewed from the standpoint that Petitioner was compelled to discharge Mr. Fried, he incredibly retained another lawfirm which again mishandled his case by not timely filing a Motion for Reconsideration or an Appeal Brief. This combination of unfortunate events must be reviewed in light of the recent, as yet unpublished, 9th U.S. Circuit Court of Appeals *Hearst* decision allowing a hearing to determine whether a "potential conflict of interest" on the part of her attorney, F. Lee Bailey, prevented Miss Hearst from getting a fair trial. The mere fact that Mr. Bailey was planning to write a book about her case

while he conducted her trial was deemed to be sufficient to determine whether the potential conflict of interest prevented a fair trial and was found to be sufficient to warrant a hearing. Here the circumstances in *Minye v. University of Michigan* certainly appear to be just as sufficient, if not more so, to reopen his case.

Petitioner's Supplemental Brief is brought pursuant to Federal Rules of Civil Procedure 60(b), (1), (2), and (6) which, inter alia, provides discretionary authority to relieve a party from a final judgment for "(6) any other reason justifying relief from the operation of Judgment." It will be argued that Petitioner has not timely requested relief under Rule 60 (1) and (2), however, Rule 60 does not preclude consideration of such relief pursuant to reason (6) of said Rule authorizing such relief for "any other reasons justifying relief from the operation of the Judgment."

A basic premise in any attorney's legal wisdom is that in the face of a Motion for Summary Judgment based on no genuine issue of material fact, everything in the attorney's power must be done to raise at least one material disputed issue. Mr. Fried grossly neglected to do those things which should have been normally within his wisdom. Instead, he indicated in his Answer to the Attorney Grievance Commission that he withheld vital evidence as a "trial tactic." He also directly ignored the trial court's request for additional information and deposition cross referencing. The easily obtainable Affidavit of Dr. Cohan and the patients' statements should have been included in a Supplemental Reply to Defendants' Motion for Summary Judgment. Failure to raise evidentiary objections to the thirty (30) exhibits attached to Defendants' Supplemental Brief precluded serious consideration by the Sixth Circuit Court of Appeals of

their inadmissibility, although such objection was raised on appeal. This particular evidentiary objection was extremely crucial in that many of the unauthenticated exhibits attached to the Defendants' Brief were subject to dispute and, for the further reason that the language of the opinion and judgment rendered by the trial court indicated that those exact same exhibits were relied upon by the court as the basis for its judgment.

The events outlined herein constitute classic "exceptional circumstances" requiring that justice afford at least one more view of this case, especially in consideration of the extreme hardship placed upon Mr. Minye in being dismissed from the University of Michigan School of Dentistry only three months prior to graduation. No other form of relief available can replace the opportunity lost to have his day in court in an effort to salvage a lifelong career.

Although it may first appear that attorney neglect does not adequately establish a basis for relief pursuant to Rule 60(b), (6), FRCP, such neglect and similar forms of misconduct have formed the basis for properly setting aside judgment. The case of *Stevens v. Stoumen*, D.C. Pa, 1963, 32 F.R.D. 385 stands for the proposition that although in the usual case, a Motion to Vacate Judgment for excusable neglect is untimely if filed more than one year after entry of judgment, excusable neglect may be treated as "any other reason" justifying relief from operation of judgment if the circumstances are exceptional. Petitioner contends that the circumstances in this case are exceptional and constitute such neglect. Plaintiff was wholly unaware of the trial strategy and recalcitrance of his attorneys and the reasons stated herein should be treated as "any other reason justifying relief" pursuant to the *Stevens* case.

In order to accomplish substantial justice, Plaintiff's case should be reopened and in further support for that proposition, cites the cases of *Klapprott v. United States*, N.J. 1949, 69 S Ct. 384, 335 U.S. 601, 93 L. Ed. 266, Motion denied 69 S Ct. 877, 336 U.S. 949, 93 L. Ed. 1105, *Patapoff v. Vollstedt's, Inc.*, C.A. Or, 1959, 267 F 2d 863 and *L.M. Leathers' Sons v. Goldman*, C.A. Mich 1958, 252 F 2d 188. The principal stated in *Klapprott* is that subdivision (b), (6), of FRCP 60 permitting the Court to relieve a party or legal representative from a final judgment for any "other reason" justifying relief from operation of the judgment vests the Court with power adequate to enable it to vacate judgment whenever such action is appropriate to accomplish justice.

Further legal support is provided for the principle that where grounds for a Motion to Vacate a Dismissal were the gross negligence of Plaintiff's former counsel and the absence of neglect on the part of the Plaintiff, the Motion can properly be made under subdivision (b), (6), of Rule 60 for any reason justifying relief other than those specified under Subdivision (b), (1), for excusable neglect. See *King v. Mordowanec*, D.C.R.I. 1969, 46 F.R.D. 474.

This Honorable Court, if for no other reason, should reverse the Summary Judgment on the basis that Mr. Fried, Petitioner's trial attorney, stated a deliberate falsehood to the Attorney Grievance Commission in his Answer in Response to Plaintiff's Complaint for the mishandling of this case at the trial court. Mr. Fried's statement that the lower court had been affirmed at a time seven months prior to actual affirmance certainly provides a basis for the notion that his gross neglect constituted actual unethical misconduct, and therefore, since attorneys are officers of the Court, their conduct, if dishonest, would constitute a fraud on the court for

the purpose of a Motion for Relief from Judgment. *H.K. Porter Company, Inc., v. Goodyear Tire and Rubber Company*, C.A. Ohio 1976, 536 F 2d 1115.

The combined mishandling of Petitioner's case at the trial level through recalcitrance and neglect, the fact that Mr. Minye paid exorbitant fees for preparation of a Motion for Reconsideration well within the time for filing same but which never occurred, the subsequent falsehood represented by Mr. Fried to the Attorney Grievance Commission and the disastrous effect the foregoing has had on Mr. Minye's appeal efforts and career, constitute exceptional circumstances warranting the relief requested.

RELIEF REQUESTED

For the reasons above set forth, Petitioner respectfully prays this court issue its Order Setting Aside the Summary Judgment and Order affirming same and remand his case to the trial court for an evidentiary hearing or trial on the merits.

Respectfully submitted:

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Dated: November 10, 1980

APPENDIX A

(United States District Court
Eastern District of Michigan
Southern Division)

Leslie Minye, Plaintiff, vs University of Michigan, et al, Defendants. Case No. 77-2421

AFFIDAVIT OF RICHARD P. COHAN, A.B., D.D.S., M.S., M.A. (Educ.)

State of California
County of Marin—ss

I, Richard P. Cohan, A.B., D.D.S., M.S., M.A., being first duly sworn, upon oath, do hereby state as follows:

1.) That I am a Doctor of Dental Surgery and Associate Professor of Oral Diagnosis and Radiology at the University of the Pacific, San Francisco, California, am an expert in the area of dentistry and dental education, and if called upon as a witness, I can competently attest to the truth of statements made herein.

2.) That on or about December 17, 1978, I was contacted by letter dated December 14, 1978, from attorney David H. Fried, attorney for Plaintiff in the above captioned matter.

3.) Attorney Fried contacted me for the purposes of retaining my services in reviewing pertinent materials and the work product of Mr. Leslie Minye pursuant to the issues in dispute in the above captioned matter and for the further purpose of reviewing deposition transcripts of certain members of the University of Michigan School of Dentistry taken pursuant to said litigation and rendering my professional opinion as to

the work product and competence of Mr. Minye during his dental school career at the University of Michigan.

4.) That I in fact was retained by attorney Fried on behalf of Mr. Minye and performed certain services including meeting on December 21, 1978 with Mr. Minye and conducting an interview with him wherein I gained impressions of his knowledge of dentistry and the amount of work which he had successfully completed prior to his dismissal in the summer of 1977.

5.) That in addition, my services entailed forwarding to Mr. Fried a curriculum vitae and my personal notes regarding my interview with Mr. Minye and my review of his work product together with my review and analysis of depositions taken in this litigation of University of Michigan School of Dentistry Department Chairman Charbeneau and Ramfjord, Staff Instructors Dr. Pape, Margeson and Kahler and Mr. Minye. I also reviewed exhibits purportedly offered at the Depositions of those individuals.

6.) That pursuant to my review, I formed the opinion that based on the work and the facts learned from the depositions and supporting records, there is ample reason for believing that an excellent chance existed of Mr. Minye being readmitted to the University of Michigan School of Dentistry and agreed to testify to establish the basis therefore.

7.) That on December 22, 1978, I composed a letter to attorney Fried with attachments including a letter dated December 22, 1978 to Steven Keyser, J.D., Director, Medical Malpractice Experts, a curriculum vitae dated December 21, 1978, and photocopies of my notes regarding the review and analysis previously mentioned, copies of which are attached hereto

constituting a one page letter to Mr. Fried dated December 22, 1978, a four page curriculum vitae with three additional pages containing publications by me, continuing education courses given, major continuing education courses attended and the notes containing fourteen pages so numbered and interview notes designated A through D, all of which material is a true expression of my opinion regarding Mr. Minye and his work and competence.

8.) That I caused said materials referred to in the preceding paragraph to be mailed with the letter dated December 22, 1978, to attorney Fried on December 22, 1978.

9.) That thereafter I received a letter from Mr. Minye dated January 23, 1979, which I included in my file on Mr. Minye.

10.) That thereafter, I was ready, willing and able to testify on behalf of Mr. Minye or sign any affidavits in support of Mr. Minye's complaint and in response to the University of Michigan's Motion to Dismiss or Alternative Motion for Summary Judgment based on no genuine issue of material fact, however, at no time was I requested to do so by attorney Fried.

11.) That my review of the Depositions of certain members of the faculty, particularly those of Dr. Charbeneau, Dr. Pape, Dr. Kahler and Dr. Ramfjord, led me to believe that in comparison with other schools of dentistry, the treatment by the University of Michigan Instructors of Mr. Minye and their evaluations of his work appeared to be unreasonable and designed to create an academic environment purposely unfavorable to Mr. Minye's candidacy for the D.D.S. degree with the possible basis being a lack of

communications between a student and instructor elevated due to Mr. Minye's bilingual background. Furthermore, my review and analysis resulted in the impression that the University of Michigan School of Dentistry instructors involved with Mr. Minye's work acted arbitrarily in certain instances and seemed to erect unusual requirements and road blocks for the purposes of denying matriculation to Mr. Minye toward the D.D.S. degree.

Further deponent sayeth not.

/s/ RICHARD P. COHAN, A.B., D.D.S, M.S., M.A.

(certification ommitted in printing)

APPENDIX B

SCHOOL OF DENTISTRY
UNIVERSITY OF THE PACIFIC
2155 WEBSTER STREET

December 22, 1978

Mr. David H. Fried, Esq.
Attorney at Law
1710 Buhl Bldg.
Detroit, Michigan 48226

Re: LESLIE MINYE
Your File 77 3089

Dear Mr. Fried,

Yesterday I met with your client, Mr. Leslie Minye. As I indicated in my letter to Mr. Keyser (copy enclosed), I am impressed with Leslie's knowledge of dentistry and the amount of work that he passed prior to being

dismissed. The work that he showed me ranged from below average to above average. Based on this work and the facts learned from the depositions and supporting records, there is ample reason for his case coming to trial and I am inclined to support that effort should you require my services.

Enclosed herewith are the following additional items:

1. Copy of my current Curriculum Vitae
2. Copy of my log for services rendered and my notes concerning the depositions reviewed
3. Copy of my notes from the interview on December 21st

In reviewing my notes, one area that I did not discuss with Leslie in adequate detail was the events leading to the failure (E grades) in the Fall semester of his Senior year in Operative and Periodontics. I would like to obtain additional information at his convenience.

Additional billing not included in the enclosed log amounts to two and one-half hours ($250.00) for services rendered today's date. Best wishes for an enjoyable holiday season.

Sincerely yours,

/s/ Rick
Richard P. Cohan, A.B., D.D.S., M.S.
Associate Professor of Oral Diagnosis and Radiology

APPENDIX C

SCHOOL OF DENTISTRY
UNIVERSITY OF THE PACIFIC
2155 Webster Street

December 22, 1978

Steven Keyser, J.D., Director
Medical Malpractice Experts
2550 Fifth Avenue, Suite 405
San Diego, California 92103

Dear Steven,

Enclosed is a copy of my Curriculum Vitae for your file. I appreciate having the opportunity to provide a service in the Minye case. Yesterday I discussed the matter with him for several hours. He impressed me with his knowledge of dentistry and in terms of the total amount of passing work he claims to have done before being dismissed from the University of Michigan. Should the case come to trial, I believe he stands an excellent chance of being readmitted based on the facts I know at his time.

Best wishes for a happy holiday season.

Sincerely yours,

/s/ Rick
Richard P. Cohan, A.B., D.D.S., M.S.
Associate Professor of Oral Diagnosis and Radiology

APPENDIX D

STATEMENT OF MRS. CHARLOTTE KING

This is Donald K. Faunce interviewing Mrs. Charlotte King at her residence, 862 Canterbury Drive, Canton Township, Michigan on December the 9th, 1977 at 10:30 a.m. This statement of Mrs. King is in connection with Mr. Leslie Minye's education at the University of Michigan.

(1) Q. Mrs. King, do you understand that we're recording this as a statement?

A. Yes, I do.

Q. Would you please tell me your full name and age.

A. It's Charlotte Jeanne (CK) King.

Q. Go ahead.

A. I'm 29 years old.

Q. And what is your husband's name?

A. David Stuart King.

Q. Do you have any children?

A. No, we don't.

Q. Stuart, S T E W?

A. S T U A R T.

Q. Alright, and what is your date of birth, mam?

A. 7-13-48.

Q. Alright, are you employed?

A. Not at this time.

Q. Do you have a profession, nurse or something like, teacher?

A. I was a control clerk in the emergency room.

Q. Control clerk in the emergency room, where?

A. Oakwood Hospital.

Q. And you're presently unemployed then?

A. Yes.

(page 1 signed by Mrs. C. King)

(p. 2) Q. Alright, now, were you at one time a dental patient of Mr. Leslie Minye at University Hospital in Ann Arbor?

A. Yes, I was.

Q. Alright. Do you recall when you last saw Mr. Minye?

A. Ah, not, not the exact date or the time, no, I don't.

Q. Was it a year ago, ah, 9, 10 months ago.

A. Approximately 9 or 10 months ago.

Q. Okay, that's the last time you saw him?

A. Yes, um-hmm.

Q. How many times had you seen Mr. Minye at the dental school?

A. Oh, gee, quite a few times. I don't recall exactly how many but a number of times.

Q. Okay, what type of work was he doing on your teeth?

A. Oh, he did some periodontol work and he did ah, some inlays and he did a couple bridges, one bridge and a gold crown.

Q. Alright, so, he saw you quite a few times?

A. Yes.

Q. Ah, during the time that Mr. Minye was treating you did you have any reason to object to his treatment?

A. No, never.

Q. What did you feel, as a layperson, concerning the quality of his work?

A. It was excellent.

Q. Alright, during the time that you were at the dental school in the chair did you ever observe anything that was unusual, or an unusual comment, you felt, an unusual comment made by an instructor?

A. Yes, ah, once I commented to Dr. Minye on a comment of one of the instructors. Dr. Minye had just finished ah, checking where my

(page 2 signed by Mrs. C. King)

(p. 3) A. (Continued) teeth came together with some black paper or, some, I don't know what you call it.

Q. Um-hmm.

A. And one of the instructors came up to check his work and told Dr. Minye to wash his hands 'cause they were filthy and, I really commented on that because I had never, as many times where I'd been a student or ah, a patient there I had never heard an instructor treat a student that way.

Q. In your opinion, were Dr. Minye's hands filthy?

A. No, he had just finished using that black paper and he washed his hands, every time he came up to me he would wash his hands.

Q. Alright. Now, did you ever observe Dr. Minye in a rough dreassage, let's put it that way, or poor dress?

A. Never, never.

Q. Was Dr. Minye always polite to you?

A. Dr. Minye is one of the most courteous people I've ever met.

Q. Alright, could you understand his use of the English language?

A. Yes.

Q. You had no difficulty in communicating?

A. No, no.

Q. Ah, was there anything at all, that you can recollect, that was objectionable of Dr. Minye?

A. No, nothing whatsoever.

Q. Okay, ah, at your age, I assume you've had previous dental work?

A. Yes, I have.

Q. Um-hmm, Was this your first time at the University Dental Clinic?

(page 3 signed by Mrs. C. King)

(p. 4) A. Ah, yes, that was my first I had been called as a patient.

Q. Alright, okay, ah. . .

A. I think I had one or two others taking care of me too and none of the students any time had ever, you know, been objectionable in their treatment.

Q. Alright, um-hmm. And were there any other incidents that you can recollect, in respect to any instructor's comments with Dr. Minye?

A. None of the other ones. If they had anything to say to him they would take him aside and a very low tone of voice that I could not hear. They would talk to him but ah, they did that with the other students too, so . . .

Q. Alright, you thought nothing unusual about that?

A. No, um-umm.

Q. Okay, ah, well had you ever, this is a delicate question, I'm going to ask it. Had you ever recall any time that you felt that Dr. Minye was unclean in any way?

A. No, no.

Q. Ah, I assume you've had an opportunity to see Dr. Minye working on other patients while you were waiting, or would you be in a separate room?

A. I would be in a separate room.

Q. Okay, so you couldn't observe that?

A. No, no, when I was there I was the only patient.

Q. Um-hmm, now would there be patients nearby, in other chairs, like in cubicles?

A. Yes.

(page 4 signed by Mrs. C. King)

(p. 5) Q. Um-hmm, alright. Did you ever observe any other of the students ah, talk to Dr. Minye in, in an insulting way of any kind?

A. No, no.

Q. Did you feel that that comment made by the instructor about Dr. Minye washing his hands was sort of insulting?

A. Yes, I did. I, I was really shocked.

Q. Um-hmm.

A. At the tone of voice and the comment, that the comment was made at all because, like I say, I've never heard any of the instructors that have come to inspect the work, or check the work, ever made any kind of comment like that.

Q. Do you recall the ah, what this instructor looked like?

A. Ah, not . . .

Q. An older man, a younger man?

A. He was an older man.

Q. Um-hmm, was he a heavy man, or thin man?

A. I think so.

Q. Thin man?

A. Yeah, or medium build.

Q. Was he a white man?

A. A white man.

Q. And you think, he was an older man?

A. Yes.

Q. Um-hmm, alright. Do you have any idea of his name, his identity?

A. No, I don't.

Q. Alright, do you recall if he had long hair, mustache or anything like that?

(page 5 signed by Mrs. C. King)

(p. 6) A. Ah, fairly short well groomed hair.

Q. Um-hmm, alright, is there anything else you'd like to add to this statement?

A. Just that, like I said, I have been very well satisfied with the work Dr. Minye has done. He has always been extremely polite and courteous and really

clean. Every time he has come up to my chair he has washed his hands, if he's been doing something that's been messy and he's been given a chance, he's washed his hands. As I said, at this time, when that instructor came up, he hadn't even a chance to, he'd just finished making the impression in my mouth, you know, with that paper. He hadn't had a chance to turn around and wash his hands.

Q. I see, alright. Could you observe if that paper had left any residual on his hands of any sort?

A. It had left black marks on his hands, it had left black marks on my teeth because he was bringing my teeth together with it.

Q. I see, alright, is there anything else?

A. Not that I can think of right now.

Q. By the way, is this your husband present this morning?

A. Yes, he is.

Q. Now, if there's nothing else, do you understand that this has been continuously recorded as your statement?

A. Yes.

Q. Is it a true and accurate account of your, of the events that you've related to me, to your best recollection?

A. Yes.

Q. Alright, we'll have this statement transcribed and brought out to you and ask that you review it and sign it, would you agree to that?

A. Yes.

Q. Alright, that'll conclude the statement.

(Handwritten at bottom of page 6: I have read all six pages and they are true. 12/15/77. /s/ Mrs. Charlotte Jean King)

APPENDIX E

STATEMENT OF RONALD L. VILLENEUVE

This is Donald K. Faunce interviewing Mr. Ronald L. Villeneuve, is that correct? Villenev, Villenev? (sic) (Villeneuve) of 6840 Plainview (sic) (Plainfield) Street, Dearborn Heights, Michigan, on the night of March 28, 1978. This statement concerns a ah Doctor Leslie Minye who is an ex-dental student at the ah University Hospital at University of Michigan in Ann Arbor. This statement is made on behalf of Dr. Leslie Minye.

(1) Q. Sir, do you understand that we're recording this as a statement?

A. Yes I do.

Q. Tell me your full legal name.

A. Ronald Lawrence Villeneuve.

Q. And what is your age sir?

A. Forty.

Q. And ah, your date of birth?

A. June the 22nd, 1937.

Q. And ah I assume you are married?

A. Yes.

Q. What is your wife's name?

A. My wife's name is Carol.

Q. Carol?

A. Right.

Q. And ah this is your legal residence?

A. Yes.

Q. Fine sir. Ah . . . you have indicated to me sir, that you presently recovered from a heart attack, is that right?

A. Yes.

Q. Are you under any particular medication that might cause you to . . . having difficulty to converse with me?

A. No.

Q. Alright. Ah, what's your occupation sir?

A. I'm a General Foreman.

Q. Where at?

A. Patterson Lake Products.

Q. Patterson Lake Products?

A. Products.

Q. Where is that at?

A. That's in Pinckney Michigan.

Q. Alright, Ah-um, now when did you become, um a . . a patient at the ah University of Michigan?

A. Approximately it was either March or April of 1977.

(Handwritten at bottom of page 1: with exceptions as noted. /s/ R. Villeneuve.)

(p. 2) Q. Alright. And is that when you first became ah, ah a patient of Dr. Leslie Minye?

A. I believe it was in that general area . . . within a month or two of that I believe I became his first patient. I would have to check my records to see.

Q. Initially, what was the . . . ah, it for, do you recall?

A. Periodontal aah . . .

Q. Periodontal work?

A. Right.

Q. Ah, now, ah . . . did you ever have any difficulty in communicating or understanding that doctor . . . ah Minye?

A. No I did not.

Q. And uh, ah could you uh . . . uh indicate to me his general appearance? Was he clean, he, dressed properly? What.

A. Well, I uh, thought that he had put on a ah . . . very good appearance. I was well pleased with the uh, appearance of Mr. Minye — he always looked clean, and ah . . . appearance, ah . . . was very very much you might call, I guess professional appearance.

Q. Uh um, alright. Ah what about ah . . . ah his explanation of procedures. Did you understand them?

A. Yes, I could understand them. He would . . . he would explain to me what he was going to do prior to any function that he did with me.

Q. Alright. Ah-um, and was he . . . ah-um . . . would you consider him ah-um cautious, or what?

A. I would consider him VERY cautious . . . ah, ah, he would ah, ask me at the time that, ah, he was going to do this. He would let me know . . . tell me to be sure to let him know if he hurt me in any way. He tried to be as gentle as possible, and he was working on, ah, . . . the, ah, all my teeth and ah . . . I felt that he was extremely . . . you know . . . extremely cautious with me.

Q. Alright.

A. Very very ah . . . ah . . . he looked after his patient.

Q. Okay. Ah, now do you recall anything about eh . . . some discussion eh . . . with ah, any other . . . instructor concerning any calcium deposits you might have had? You remember anything at all about this?

(page 2 signed by R. Villeneuve)

(p. 3) A. Not really. Um . . . I know not really.

Q. Alright. Ah-um, about how many times did you see Dr. Minye, in your best estimate?

A. I'd say approximately six — I wouldn't . . . in that general area four to six times.

Q. Alright, four to six times. Okay, ah-um, now you said that you could understand him. Ah-um you of course were aware that he did have an accent.

A. Yes, definitely. And ah-um I could understand him, ah, in fact we had talked about where . . . where he was going to practice at, ah at the ah end of this term, etcetera, etcetera, so I could carry on a conversation with him.

Q. Alright. Okay. Ah-um, so to sum up then, did you feel that he had a pretty much of a professional appearance?

A. Yes I think he did.

Q. Uh-um. Okay. Ah, was there anything at all that you can recollect that might have been objectionable about ah Dr. Minye.

A. Off-hand no I can't think of anything as might . . . ah that was objectionable . . . as a matter of fact I was quite surprised when I found out that he wasn't my . . . ah student any longer. I thought he had graduated.

Q. I see. Alright.

A. When I left him in August . . . he was taking the month of August off and ah . . . I believe that it was the month of August off and that when he come back I eh I'm ah that when September rolled around I had a new student . . .

Q. Uh-um.

A. And I thought he had graduated.

Q. I see. Okay. Alright now eh . . . is there anything that you can think of uh in connection with your treatments by Dr. Minye that you feel is important you'd like to add to this statement? Do you think we covered everything that you know about?

A. Well I feel that he had ah . . . the uh only thing I do feel that he did give me extra . . . well I might say extra special treatment type

(page 3 signed by R. Villeneuve)

(p. 4) thing. He was really . . . really looked after his patient.

Q. Okay.

A. If I wanted . . . If I could put it in that manner.

Q. Alright. Fine . . . Ah, we always ask this as part of our records, sir, ah what we call an anchor address, in case you should move and we want to contact you ah . . . do you have a family living in this area? Parents or anything like that? Children or ah . . . brothers or sisters?

A. Yes, but I don't know my sister's address, and ah . . .

Q. Okay. Its alright. Okay.

A. I have relatives in the area.

Q. Then uh-um you consider yourself as a permanent resident

A. Well we were going to move. As a matter of fact we were going to move up until two weeks ago and then uh . . . due to my attack we have decided that we are going to stay here, so I'm here for awhile . . . ha ha ha hum hum hum . . .

Q. So . . . if you move would you move out of state?

A. No.

Q. I see.

A. No. Definitely no.

Q. Okay. And I assume ah you . . . you plan on staying at Patterson Lake Products?

A. Yes.

Q. Alright. Fine. Ooookaaay . . . if there's nothing else then sir, then do you understand that this has been continuously recorded as your statement?

A. Yes I do.

Q. And it is a true and accurate account uh uh . . . to the best of your recollection?

A. Yes it is to the best of my recollection.

Q. Sir, we'll have this statement transcribed and will bring it out to you and ask that you read it over, and if you wish, errr . . . we will ask that you sign it. Do you agree to that?

A. Certainly.

Q. Alright, then that concludes the statement.

(Handwritten at bottom of page 4: I have read these 4 pages and they are true with the exceptions noted on page 1. /s/ R. Villeneuve)

APPENDIX F

STATEMENT OF MRS. COLETTE ROBINSON

This is Donald K. Faunce interiewing Mrs. Colette Robinson of 1711 Park Road, Jackson, Michigan on April 7th, '78. This interview and statement concerns a Dr. Leslie Minye, a former dental student at the University School in Ann Arbor. This statement is made on behalf of Dr. Leslie Minye. Ah, Mrs. Robinson, do you understand that we're recording this as a statement?

(1) A. Yes, I do.

Q. Do we have your permission to record this?

A. You certainly do.

Q. And please tell me your full legal name.

A. Colette Urbain Robinson.

Q. How do you spell your middle name?

A. Ah, that's my maiden name, that's U R B A I N.

Q. Okay, that's your maiden name?

A. Right.

Q. And Colette is C O L?

A. One L, two T's and an E. C O L E T T E.

Q. Alright, and how old are you, Mrs. Robinson?

A. Ah, 50.

Q. 50, alright, and your legal residence is here on Park Road?

A. 1711.

Q. Right. And I understand, ah, are you married, single, divorced, or what?

A. Divorced.

Q. Divorced. And ah, what is your occupation?

(p. 2) A. I'm a school teacher.

Q. Where at?

A. With the Jackson Public Schools.

Q. The what?

A. With the Jackson Public School.

Q. Okay. What school?

A. Ah, Parkside High School.

Q. Alright. Ah, do you recall Dr. Leslie Minye?

A. I most certainly do.

Q. Alright, Ah, did he handle your peridontal problems?

A. Yes, he did.

Q. Alright, that was on your gums, then, right?

A. Right.

Q. Alright, during the time he was working on you did you ever have any objections to his work?

A. Absolutely none.

Q. What was his mannerisms?

A. Oh, I thought it was excellent. He was very concerned about whether he was causing any pain or anything. He was very, very patient.

Q. I see. Alright and ah, did you ever hear an instructor chastise him, or correct him?

A. Ah, on one occasion I thought that the instructor was perhaps a little bit ah, well, yes. Was a little bit overly critical.

(p. 3) Q. I see. Alright. You don't know who that instructor was, by any chance?

A. No. No, he was speaking behind me and I considered it was none of my business.

Q. I see, alright. Ah, now in concerning Dr. Minye's dress, did he always seem to be properly dressed and clean-cut appearing?

A. Oh, absolutely, he, he, was just like the other dental students.

Q. Um-hmm. Would he be dressed in a type of a white coat, or what?

A. Yes, right.

Q. Alright, what about his cleanliness, about his hands or anything . . .

A. Excellent.

Q. Excellent? I see. Could you understand Dr. Minye?

A. Yes.

Q. You had no problem understanding him?

A. No, as long he seemed or having any problem understanding me. We're both from Europe.

Q. Oh, I see. What is your ethnic background?

A. I am from Belgium.

Q. You're Belgian?

A. Yes.

Q. I see. Uh-huh. You had no problem at all understanding?

A. None whatsoever.

Q. Okay. Alright. Ah, are you still a patient at the dental school?

(p. 4) A. No, I had to drop out because I had an accident in December of 19 ah, 69 and ah, I was transferred to Saint Joseph in Ann Arbor and as soon as I was able to after the surgery I contacted Dr. Minye at the dental school to tell him that I would not be able,

I had a broken neck and I told him that I would not be able to return to the school for quite some time and ah, he mentioned at the time that he had tried to contact me at home in Jackson. And he wondered why there'd been no answer. But I'd been hospitalized in Jackson prior to being transferred.

Q. Alright. When was the last time you saw Dr. Minye as a patient, do you recollect?

A. No, I don't because at the same time I, I had a blow on the head, my memory of certain dates, is very . . .

Q. I see. Alright. So,

A. I could look it up.

Q. Yeah, well, it's gotta be what, some, more than a few years ago?

A. No, it was in '69.

Q. 69?

A. Yes, I mean 70, no, '69. Wait a minute, what are we . . .

Q. '69, that's nine years ago.

A. I am sorry, it's not '69, ah. . .

Q. '76?

(p. 5) A. '76.

Q. 1976 you had an accident?

A. Yeah. And anything that's happened ah, shortly before that is very, except I remember, you know, when I was in the dental chair.

Q. Alright.

A. But dates and —

Q. So you saw him sometime in, probably the fall or summer?

A. In the fall, definitely in the fall.

Q. The Fall of '76. Okay. Alright, and how many times do you think you saw him, roughly?

A. Ah, he was the second dentist who took care of —

Q. He was the what?

A. He was the second dentist I was assigned to.

Q. Second dentist?

A. And ah, oh, my, I'd say about 6, 7 times.

Q. 6, 7 times. Alright, and you never had any objections to him?

A. None, whatsoever. He was very patient with it.

Q. Alright. Okay, and there was nothing about his professional approach that you conside (sic), that you had any objections to?

A. No, he was timid and he gave me the appearance that he felt —

Q. He'd give you what?

A. He'd give me the appearance that he felt that he was ah, being watched very closely.

(Handwritten at bottom of page 5: I do not recall making this statement. CHR)

(p. 6) Q. Oh, is that right?

A. You know ah, he wasn't as bold and sure of himself, and ah, I got to sympathize. (Handwritten: no recollection of making this statement CHR)

Q. You sympathized with him?

A. Well, shortly after I heard the gruff manner in which he was approached.

Q. Oh, he was approached by . . .

A. He was approached by the instructor who came to correct his work.

Q. In somewhat a rough manner, you say?

A. Um-hmm.

Q. I see, okay. Is there anything else you'd like to add to this, concerning Dr. Minye?

A. No, I certainly would appreciate an opportunity to be his patient again.

Q. I see, very good. Alright then, do you understand, now that this has been continuously recorded as a statement?

A. Yes, I do.

Q. Alright, and is it a true and accurate account to the best of your recollection?

A. Ah, it certainly is, I'm glad you corrected me on the dates, I was confused.

Q. I see.

A. But it definitely is, yes.

Q. Okay, then ah, we'll have this statement typed and get it out (p. 7) to you and ask that you look it over and ask you to sign it. Would you agree to that?

A. Oh, I certainly will.

Q. Alright. Then that'll conclude the statement.

(Handwritten at bottom of page 7: While the general contents are true, it appears to me that some statements have been editorialized. /s/ C. Robinson)

APPENDIX G

STATEMENT OF ANTHONY SUMMITT

This is Donald K. Faunce interviewing Anthony Summitt at his residence, 17190 Hannan Road.

(p. 1) Q. What's city is this?

A. New Boston.

Q. New Boston, Michigan on Sunday, April 9th, 1978 at 1:30 p.m. This statement concerns ah, Dr. Leslie Minye. This statement is made on the behalf of Dr. Leslie Minye. Anthony, do you understand that this is being recorded as a statement? Do you understand that?

A. Yes.

Q. Is your father present here, today?
A. Yes.
Q. What's your father's name?
A. Kenneth.
Q. And what is your mother's name?
A. It's Ann.
Q. A N N E?
A. No, A N N.
Q. Alright, and how old are you, Anthony?
A. 16.
Q. What's your birth date?
A. 9-8-61.
Q. Alright ah, what is, what is your home phone, here?
A. 753-4116.
Q. And ah, do you recall being treated at the University Dental (p. 2) School in Ann Arbor by a Dr. Leslie Minye?
A. Um-hmm.
Q. You do recall?
A. Yes.
Q. When was that, roughly?
A. Ah, last ah, last December, in the winter.
Q. Winter of '77?
A. Yeah.
Q. Okay. Now, what did he do?
A. He ah, put in a three unit bridge?
Q. Alright, did he also put in a crown?
A. Ah . . .
Q. Do you recall?
A. Yes.
Q. You think a crown?
A. Yes. And he capped my two front teeth.
Q. Okay.
A. And he put in a, he put in a gold filling, too.

Q. Okay. In your front?

A. Yeah, capped my two front teeth. Plus put a gold filling in the back.

Q. Okay. And ah, during the time that the doctor was taking care of you, ah, how did you feel about him, on, did he, you know, in respect to his work?

(p. 3) A. He was a good dentist. I liked the way he did his work and he explained everything to me, what he was gonna do.

Q. Alright, did he cause you any inconvenience, such as ah, unusual pain or anything?

A. No, he gave me a shot and everything before he did anything. He told me if it was gonna hurt or not.

Q. He would explain ahead of time?

A. Yeah. Yeah.

Q. Were you ever there, do you recall ah, when a instructor would talk to him? Do you remember any incidents?

A. Ah, yeah.

Q. What do you remember?

A. They was talking to him about . . . how to put the bridge in and ah, how to cement it 'n' everything.

Q. Um-hmm. Alright. Do you ever recall any instructor chastising, or bawling him out correcting him?

A. No, uh-uh. The instructors always said he did good work, yeah, most of the time.

Q. Yeah, alright. Now ah, when Dr. Minye would first see you, what would he do eh, would he, would he prepare himself?

A. No, he'd just say, "Hi, how are you doing?" "How you been?" and . . .

Q. Did he wash or what?

A. Yeah, he washed his hands all the time before he come in here, all the time.

(p. 4) Q. Would he usually be dressed in a white coat or something?

A. Yeah, um-hmm.

Q. Okay. Could you understand Dr. Minye?

A. Yeah, most of the times. Just a couple times I couldn't, you know.

Q. I see. Okay. Ah, if you couldn't, would you ah, ask him?

A. Yeah. To repeat his self.

Q. Then could you understand him?

A. Um-hmm.

Q. I see. Ah, what about his dress, other than the white coat? Was he dressed cleanly, or

A. Yeah, he had his hair combed and pants on and dress shoes.

Q. Um-hmm. Alright ah, well then, to recap this thing, would you consider Dr. Minye a clean person?

A. Yeah, yes.

Q. Alright.

A. And he always washed his hands 'n' stuff before he worked on me.

Q. Okay. Ah, and you do recall an instructor talking to him about how to cement your bridge in and things like that.

A. Yeah.

Q. But you never overheard an instructor ah, severely correcting him or reprimanding him?

A. Um--umm.

Q. Never did?

(p. 5) A. No.

Q. Okay, was your mother usually with you?

A. Yeah.

Q. In the treatment room?

A. Ah, no, she was always in the waiting room. Once in a while she'd come in there.

Q. Uh-huh. Okay. Was your mother a patient of Dr. Minye's?

A. No.

Q. Alright. Alright. Have you been back to the dental school since this?

A. Ah, yes.

Q. With a different student?

A. Yes, yeah.

Q. Alright, just for what? To —

A. To get my teeth cleaned.

Q. Okay. Alright, nothing, heavy work like Dr. Minye did?

A. No, um-umm.

Q. Alright, have you had any problems with your bridge or crown or anything?

A. Um-umm. No.

Q. No, alright. Okay, is there anything else, Anthony, you want to add to this?

A. No.

Q. Alright, do you understand that this had been continuously (p. 6) recorded as your statement?

A. Um-hmm, yes.

Q. And is it a true and accurate account to the best of your recollection?

A. Yes.

Q. Alright, we'll have this statement typed and get it up to you and ask that you read it over and have your parents read it over and we'll ask that you sign it, okay?

A. Yes.

Q. Alright, that'll conclude the statement.

(Handwritten at bottom of p. 6: I have read all six pages and they are true. /s/ Ann Summitt /s/ Mr. Kenneth W. Summitt /s/ Anthony Summitt)

APPENDIX H

ARGUMENT

Evidence Precluding Summary Judgment On No Genuine Issue Of Material Fact

1. Plaintiff's Affidavit attached to his Reply to Defendants' Motion for Summary Judgment contains a properly identified examination dated July 12, 1977, containing a question no. 5: "Describe the sequence and instruments used during the cementation appointment for 12^{25}. Minye's Answer "The area is washed and dried. It should not be dehydrated, however. 1-2-3 cavity medication is used. It is followed by application of Soltrol 130 to remove any oiliness." *Dr. Kahler* circled his words "1-2-3 cavity medication" and indicated NO and Dr. Kahler also circled the words "Soltrol 130" and wrote NO. It does not require a D.D.S. degree to refer to Page 187 of the text entitled *Operative Dentistry* written in part by Dr. Kahler at Page 187 under the subheading of "Cementation of the Gold Inlay" to see that the second full paragraph reads "with the isolated area dried, but not dehydrated, the 1-2-3 cavity medication is applied. Any residual oiliness from this medicine is removed by scrubbing with a cotton pledget of Soltrol 130." Why did Dr. Kahler circle the medication indicated on the answer when they are exactly as reflected in the textbook from which Mr. Minye was supposed to learn dentistry? Similar examples of apparent deliberate capricious grading by Dr. Kahler of Plaintiff's written examination appear in the attachment to Plaintiff's Affidavit. (447a-486a)

2. Plaintiff's Deposition Testimony relates incidents where requests by Plaintiff for evaluation by faculty members would be rebuffed with remarks such as "Why do you need that?" in a general atmosphere of hostility. (Minye Depn., 258a)

3. Plaintiff's testimony relates an incident arising from a critical clinical examination during the summer of 1977 when Dr. Margeson evaluated his work on a broken tooth as "finished margins look good, retention looks fine, external outline form, fine. If I am extremely critical, then it is probably too wide." Thereafter, Dr. Kahler came to his cubicle demanding to see the work and said "nothing is good with it, internal outline all around. I don't know how you could ruin it so badly." (Minye Depn., 259a, 260a)

4. Plaintiff's testimony relates that in the summer of 1977 he was removed from work on live patients and required to do work on typodonts by Dr. Kahler even though he had already accomplished the assignments in previous semesters in Operative Dentistry and even though he was allowed to work on live patients in Periodontics. (Minye Depn., 267a)

5. Plaintiff relates an incident where Dr. Cohen in Operative Dentistry was rude and unprofessional, he became angry after assigning a temporary restoration which another doctor told Plaintiff to complete by cementation after which Dr. Cohen became angry at Plaintiff for not having waited until the end of the day for Dr. Cohen to see the work prior to cementation causing Dr. Cohen to remark "I don't want to work with you anymore" and an incident with Dr. Cohen where he told Mr. Minye in the presence of his patient that "Mr. Minye, you look dirty. Get out and wash yourself." (Minye Depn., 267a-270a)

6. Plaintiff was accused of not speaking English in front of a patient by Dr. Fleszar. (Minye Depn., 273a)

7. Mr. Minye testified to an incident where Dr. Kahler, during his first semester, junior year, severely chastised Mr. Minye for not wearing his face mask to cover his beard even though he had not begun any clinical procedure work. (Minye Depn., 278a)

8. Again, Plaintiff testifies that Dr. Kahler during Plaintiff's senior year pulled Mr. Minye's mask down exposing his hair and mustache in front of another instructor and degraded him even though his facial hair was no longer than that of others. (Minye Depn., 279a)

9. Mr. Minye testified that during the summer of 1977, Dr. Kahler loudly chastised him in front of a patient for trivial matters not relevant to the quality of his work. (Minye Depn. 280a)

10. Dr. Kahler gave Plaintiff a clinical examination on a resin assignment which had never been given during any regular semesters. (Minye Depn., 281a)

11. Another Kahler incident occurred when Plaintiff, in the fall of 1976, passed a clinical examination in Operative Dentistry given by Drs. Margeson and Carpenter which was failed by 1/3 of his class. After Mr. Minye had brought this to the attention of Dr. Kahler, he showed surprise but said "Well it still doesn't make any difference. You will be removed from patient contact." (Minye Depn., 282a)

12. Dr. Charbeneau wrote a very poor report on Plaintiff's work even though he had never seen it. (Minye Depn., 284a, and Depn. Ex. No. 4, 336a)

13. An incident between Dr. Margeson and Plaintiff occurred after Plaintiff worked on a Class VI restoration. Dr. Margeson remarked that it was fine after which Dr. Pape went to the cubicle and said "It is no good" even though Dr. Margeson had told him "It's good, pack it up." Both instructors had seen the restoration at the same time. (Minye Depn., 286a)

14. Dr. Margeson had assigned a gold inlay to Plaintiff during the summer of 1977 but then Dr. Kahler called aside Dr. Margeson and Heys and after a 20 second discussion, Dr. Margeson revoked the assignment of the gold inlay and required Mr. Minye to continue with amalgams. (Minye Depn., 286a-287a) When questioned about this incident at his Deposition, Dr. Kahler could not recall the incident but did not think it occurred (Kahler Depn., 386a) but Dr. Margeson confirms this incident (Margeson Depn., 396a) and so does Dr. Heys (Heys Depn., 423a, Lines 1-3). Many of the incidents regarding Dr. Kahler related by Plaintiff at his Deposition were not remembered by Dr. Kahler (Kahler Depn., 371a, 379a, 385a-386a)

15. Drs. Heys, Pape and Margeson in Operative Dentistry refused to sign Plaintiff's computer cards during the summer of 1977 registering his work and evaluation thereof. (Minye Depn., 291a)

16. Dr. Ramfjord, Periodontics Chairman, accused Plaintiff of lacerating a patient's gums even though they had not been lacerated and Dr. Ramfjord had not seen Plaintiff working on this patient (Minye Depn., 293a; Ramfjord Depn., 113a-116a)

17. Dr. Zahn in Periodontics had evaluated Mr. Minye during the summer between his Junior and Senior

year of 1976 and approved his work; however, after Plaintiff was re-admitted after Dr. Cash, the Vice-President of the University had talked to Dr. Doerr, Dr. Zahn began to severely analyze his work and became overly critical. (Minye Depn., 294a-295a)

18. Dr. Klausner of Operative Dentistry, instructed Plaintiff to start a case on a patient who had acute Necrotizing Ulcerative Gingivitis and Plaintiff objected that the mouth should heal first. Dr. Klausner rebuffed him and instructed him to go ahead on the patient. Mr. Minye asked that Dr. Klausner confirm the assignment in writing which he did, angrily. Later, Dr. Charbeneau, Department Chairman, came to Mr. Minye's cubicle and asked how he dared to start this whole procedure. This particular patient had been assigned to Mr. Minye from both the Operative Dentistry Department and Clinical Periodontics and he had seen the patient five minutes apart. (Minye Depn., 297a-299a) Later, Dr. Charbeneau wrote the memo of November 16, 1976 accusing Mr. Minye of not recognizing a "full blown" acute Necrotizing Ulcerative Gingivitis. (Minye Depn. Ex. 4, 336a)

19. Dr. Rowe explained during a previous course that Mr. Minye should not concern himself with his mid-term exam and that he would be fine. Then, in the summer of 1977 he was required by Dr. Rowe to make an extensive outline which Plaintiff meticulously prepared but which Dr. Rowe rejected outright and, which resulted in Dr. Rowe propping his feet up on his desk a few inches from Mr. Minye's face. (Minye Depn., 300a)

20. Associate Dean Doerr suggested that Mr. Minye should seek an appointment with a psychiatrist or psychologist. (Minye Depn., 303a; Doerr Depn., 235a) Dr. Doerr stated that it was Dr. Kahler who suggested to Dr. Doerr that Plaintiff had some problems in comprehending operative procedure. (Doerr Depn., 235a)

21. Plaintiff had displayed some of his work in the form of rubber cast replicas of the original teeth to a practicing dentist who said his work was acceptable. (Minye Depn., 311a) Mr. Minye also showed his work to a fellow student who had since graduated who also declared it acceptable. (Minye Depn., 311a)

22. Mr. Minye admitted that he had an opportunity to meet with the Executive Committee after his first dismissal and denies he had an appointment for a second meeting. (Minye Depn., 332a)

23. Dr. Kahler testified at his Deposition that he did not recall the incident complained of by Plaintiff regarding his hair and his beard and states the length of the beard does not come into effect at the school. (Kahler Depn., 371a-372a)

24. Dr. Kahler testified that the three examinations given by him during the summer of 1977 to Plaintiff were not graded and had nothing to do with the failing status of Mr. Minye. (Kahler Depn., 373a-377a) However, Dr. Pape in his Depostion Testimony testified that in addition to the clinical work, the written exam counted as part of the final grade and that they would have been brought up in discussions with his superiors.

(Pape Depn., 349a) Plaintiff had been told by several of his instructors that he was being failed for his work in the summer of 1977 because of a failure of the written examinations, among other things. (Minye Affidavit, p. 2, 445a)

25. Dr. Kahler testified that the purpose of the written examination was to refresh Plaintiff's memory; however, he admitted that no courses prior to the examination were given to Plaintiff. Dr. Kahler could not specifically recall whether he told Plaintiff that he had failed the examination. However, Plaintiff was required to retake one examination. (Kahler Depn., 378a-380a)

26. Dr. Kahler acknowledges that he could have made the statement that Plaintiff was "unteachable" but does not specifically recall it. (Kahler Depn., 385a)

27. Dr. Kahler states that his only contact with Mr. Minye during the summer of 1977 was on a clinical examination dated July 20, 1977 and with the written exams. (Kahler Depn., 386a) However, as was corroborated by Dr. Margeson and Dr. Heys, Dr. Kahler had instructed that a gold inlay assignment be withdrawn from Mr. Minye. (Margeson Depn., 398a, Heys Depn., 423a)

28. Dr. Kahler testified that the reason certain computer card grades were marked out on one of Mr. Minye's assignments was that he had picked up the wrong card. (Kahler Depn., 388a and Depn. Exhs. 10 (392a) and 11 (393a) However, Mr. Minye alleges that the grades were changed deliberately after the initial evaluation. (Minye Depn., 253a-256a)

29. Dr. Kahler was the same instructor who had failed Mr. Minye in the fall of 1976 and who had failed Mr. Minye on the three written examinations and the clinical examination given on July 20, 1977. (Kahler Depn., 378a-389a) However, Dr. Kahler hedges on the question as to whether he observed anything in Mr. Minye during the summer session in 1977 to change his opinion that he did not know basics to which Dr. Kahler replied "I didn't work with him in the summer session that I recall. Maybe I got him once. I don't think so." (Kahler Depn., 390a) Thereafter, Dr. Kahler refuses to answer specifically what weight was given to the clinical examination of Mr. Minye during the staff determination of his final grade in Operative Dentistry and simply ends his testimony by stating "I honestly don't remember." (Kahler Depn., 391a)

30. Dr. Andrew Koran, voting member of the Executive Committee, testified that the Committee reviews grades and discusses a student's work applying certain written criteria to determine whether a student goes on probation, is warned or is dismissed. (Koran Depn., 203a) However, when specifically asked about his vote during the August 23 and 24, 1977 telephone survey of Committee members regarding Mr. Minye, Dr. Koran did not go beyond the grade of E reported and indicated that he had *never* seen any clinical or operative work of Mr. Minye. (Koran Depn., 203a-208a) If there were written guidelines and a general procedure to review a student's work, whether on vacation or not, should not the Committee have applied those guidelines to Mr. Minye at the end of the summer of 1977? Mr. Minye asserts that not only was his evaluation by his clinical instructors

arbitrary and capricious, but also the vote of the Executive Committee was arbitrary and capricious in disregard for its own guidelines.

31. When confronted with Mr. Minye's assertion that Dr. Koran indicated that he would be better off going to another school because the same problems would occur at University of Michigan, Dr. Koran denied saying so but then admits that he did say it was one of his options. (Koran Depn., 209a)

32. Dr. Gerald Charbeneau, Chairman of the Department of Operative Dentistry, testified that clinical instructors carry personal notebooks in which they record notes on students, however, after acknowledging that he himself had a book which he used when evaluating students, he does not know where his book is as it pertains to Mr. Minye and that his notes regarding Mr. Minye may well have been destroyed. (Charbeneau Depn., 149a-152a)

33. Dr. Charbeneau testified that Dr. Kahler told him about Plaintiff's beard (Charbeneau Depn., 153a-154a); however, Dr. Kahler had testified that he didn't even recall the incident with Mr. Minye's beard or hair and that the length of the beard did not come into effect with the staff at all. (Kahler Depn., 371a-372a) This certainly raises questions as to the credibility of Dr. Kahler's Deposition testimony in that his Department head, Dr. Charbeneau, acknowledges that Dr. Kahler brought up Mr. Minye's beard to the department head; however, his Deposition testimony is that he does not recall any incidents with Mr. Minye and that the hair and beard had no effect on the staff.

34. Dr. Charbeneau acknowledges that the acute Necrotizing Ulcerative Gingivitis case had been assigned to Mr. Minye by another staff member which Mr. Minye was reluctant to begin work on which ultimately resulted in the November 16, 1976 memo wherein Dr. Charbeneau accuses Mr. Minye of not recognizing a "full blown" acute Necrotizing Ulcerative Gingivitis. However, he makes the assumption that the tissues were in a state of health when the assignment was made. Later, he acknowledges that he would chastise the instructor who made the assignment for restorative treatment under the condition of the Gingivitis that he observed. (Charbeneau Depn., 164a-179a) In fact, Dr. Charbeneau acknowledges that the assigning instructor could have been misleading the student. (Charbeneau Depn., 169a) A form called a "treatment program" dated April 7, 1976, and *signed by Dr. Kahler*, says, regarding this Gingivitis case, "for urgencies on tooth No. 3 and the two teeth No. 12 and 13" and also indicates that the patient had Gingivitis. (Charbeneau Depn., 194a)

35. Associate Dean Doerr admits that it is not proper to accuse Mr. Minye of not speaking English or not speaking proper English and admits that to go to Mr. Minye's cubicle and pull his hair and say your hair is too long is improper. (Doerr Depn., 224a-226a)

36. Dean Doerr acknowledges that the instructor who said "Speak English" was in Periodontics but cannot recall the name of the instructor. He does recall speaking to the director of Periodontics, Dr. Nissle, about the comment to Mr. Minye. (Doerr Depn., 227a) Dr. Doerr also admits that Dr. Nissle

never responded to the comments and that Dean Doerr did in fact relate Mr. Minye's complaints to Dr. Nissle, Dr. Charbeneau, Dr. Ramfjord and that he made personal notes to that effect which were discarded immediately afterwards. (Doerr Depn., 228a-230a)

37. Dean Doerr acknowledges that Mr. Minye had successfully completed his first three years at University of Michigan Dental School according to his grade transcript and that summer of 1977 was to repeat two classes as a prerequisite to repeating his fourth year. (Doerr Depn., 237a-238a)

38. Dean Doerr acknowledges that Dr. Cash, Assistant to the President, talked with Dean Doerr about reviewing Mr. Minye's case after his first appeal was denied (Doerr Depn., 239a-240a) and later the Committee readmitted Mr. Minye for a twelve-week Summer session; however, no remarks whatsoever are reflected in the minutes of the Executive Committee Meeting specifying any sort of a probation or strict probation status. (Doerr Depn., 241a, 569a)

39. Dean Doerr seemingly admits that he told Mr. Minye that if he changed his appearance he could graduate and goes on to say that the grading system used is in place so that those kinds of personal criteria do not influence the grading but acknowledges that there is a human element that plays a factor in the Defendants' program. (Doerr Depn., 244a-246a)

40. Dean Doerr seemingly contradicts Dr. Kahler in that Dean Doerr says that Plaintiff could have been returned to live patients but he was not as a result

of a *combined* decision of the Operative Dentistry staff. (Doerr Depn., 247a-248a) However, Dr. Kahler testified that it was his decision along with Dr. Doerr's. (Kahler Depn., 370a, Lines 17-23)

41. Dr. Harry R. Pape, of the Operative Dentistry Department, testified that the only grades are on the computer cards and in his black book. (Pape Depn., 344a) However, his notes were turned in to Dr. Kahler (Pape Depn., 345a) and the computer cards of the instructors are also turned in to Dr. Kahler which ultimately go into the student file. (Pape Depn., 346a) Dr. Pape indicated that he used the standard grading system used by all instructors for evaluating student preparations on live patients and typodonts which consists of an R, S, T, V. The R being the best grade possible and the V being the worst grade possible. (Pape Depn., Ex. 6, 366a) The Deposition Exhibit 6 of May 24, 1978 indicates that a V rating in any category or three T ratings would result in failure of examination. Despite the grading system for clinical examinations, Dr. Pape declared that the same system would not apply for his daily evaluations and, indeed, he gave Mr. Minye three S's and one T for restoration work by Mr. Minye on June 21, 1977 and did in fact record a failure in his notebook for that restoration work. (Pape Depn., 347a, and Ex. 3, 365a)

42. Dr. Pape admits writting a memo to Dr. Kahler at the end of the summer of 1977 regarding Mr. Minye in which he indicates that he had not had much contact with Mr. Minye and cannot evaluate his present level of clinical ability. (Pape Depn., 363a, and Depn. Ex. No. 7, 367a) A note was written toward the end of the summer of 1977 and

given to Dr. Kahler, (Pape Depn., 362a). Thus, it would appear as though Dr. Kahler and Dr. Pape both attempted to explain that they did not wish to be responsible for grading Mr. Minye and firmly indicated that they both had not had sufficient contact with Mr. Minye to evaluate him for the summer of 1977.

43. Contrary to Dr. Pape's use of the R, S, T, V grading system, Dr. Heys indicates that he reviewed five finishes in seven cavity preparations on Mr. Minye's work and graded each one on the R, S, T, V system. He explains that the R is good or excellent, the S is satisfactory, the T is unacceptable and the V is failing. (Heys Depn. Tr. 7-8) On June 7 Dr. Heys had contact with Mr. Minye and evaluated two amalgams on teeth No. 4 and 5. He evaluated three R's and one T on one tooth and three R's and one S on another tooth. He goes on to say that he did not relate a grade like A, B, C, "but they were passable." (Heys Depn., Tr. 12-13) Is it not arbitrary for Dr. Heys to consider a T grade "passable" when Dr. Pape claims that a T grade on *daily* work was a failure? (Pape Depn., 347a-348a)

44. Dr. Heys acknowledges that tooth 23^2 was finished and he indicated so by punching the computer card corresponding to that tooth. (Heys Depn., 422a; Depn. Ex 9, 432a) However the grade sheet carried in the instructors' grade books for that particular assignment does not show any credit for the completion of tooth 23^2 (Depn. Ex. 5, 431a) It appears as though Dr. Heys indeed approved completion of tooth 23^2; however, Mr. Minye never received proper credit for such completion.

45. Dr. Margeson indicates that all instructors in Operative Dentistry had some input in the final determination of Mr. Minye's grade at

determination of Mr. Minye's grade at the end of the summer of 1977. (Margeson Depn., 399a) However, Dr. Kahler (Kahler Depn., 390a) and Dr. Pape (Pape Depn., 362-½a) indicated they had very little contact with Mr. Minye and could not evaluate his passability. In addition, Dr. Margeson then explained that he felt he couldn't contribute a grade on Mr. Minye at the end of the summer of 1977 because of his limited contact with Mr. Minye. (Margeson Depn., 404a) Again it appears as though no instructors were willing to take the responsibility for a failure. Could this be because he was pre-destined to fail and the underlings of Dr. Kahler did not want to participate in such a plan?

46. Dr. Sigurd P. Ramfjord, Chairman of the Periodontics Department, claims that Plaintiff was his student in the fall of 1976 and the summer of 1977. (Ramfjord Depn., 111a) However, he saw only one of Mr. Minye's patients on June 6, 1977 which was a significant clinical examination. He failed Mr. Minye on the examination. (Ramfjord Depn., 111a) This was the only contact that Dr. Ramfjord had with Mr. Minye and it coincidentally happened to be the incident where Mr. Minye allegedly "hacked up" the gums of the patient and tore the tissue. (Ramfjord Depn., 113a) However, after probing questioning, Dr. Ramfjord changed his rendition of the original examination and indicated that he in fact had not actually seen Mr. Minye "hacking" at the patient. (Ramfjord Depn., 114a) This incident was explored further by Plaintiff's counsel and revealed that the instructor on June 6, 1977 made a check of this patient before the

assignment to Mr. Minye based solely on records and a note appeared that the patient was accepted for treatment but "should be checked clinically." (Ramfjord Depn., 119a-121a) Thus, it appears once again Mr. Minye was given a patient who was susceptible to bleeding upon gentle probing and was told to perform a scaling procedure resulting in obvious bleeding which was observed by Dr. Ramfjord resulting in a severely negative report.

47. Dr. Fleszar, Periodontics Department, testified that he recalled that he made a statement to Mr. Minye as to the manner in which he was speaking for purposes of having Mr. Minye speak louder but denies "to the best of my knowledge" ever saying "speak English." (Fleszar Depn., 131a-134a)

48. Dr. Fleszar unequivocally states that he taught the summer session in Periodontics in 1977 and had given grades to Mr. Minye (Fleszar Depn., 129a-130a) but later indicates that he had no input in figuring the final grade. (Fleszar Depn., 137a)

49. Dr. Ainslie testified that Dr. Ramfjord, head of the Periodontics Department, or Dr. Nissle, chief instructor of Periodontics, told Dr. Ainslie to keep an eye on Mr. Minye for time used in clinic sessions during the summer of 1977. (Ainslie Depn., 142a) Dr. Nissle, in charge of the Periodontics Clinic in the summer of 1977, testified as to a formula that is normally used to determine a student's grade based on a curve of the entire group of students; however the formula was not used in the case of Mr. Minye but rather a staff determination was made because Mr. Minye was the only one in the summer of 1977 with special

status. (Nissle Depn., 87a-94a) However, this directly contradicts Dr. Ramfjord who said that the formula applied to Mr. Minye. (Ramfjord Depn., 112a, Lines 2-3) Thus, the question is raised as to exactly how Mr. Minye was evaluated during the summer of 1977 in Periodontics.

50. Dr. Nissle explained that it was expected that Mr. Minye would have final grades of a seven or above and pass the clinical examinations. (Nissle Depn., 96a-97a) However, this is in direct contravention of Paragraph 3, Pg. 2 of the CMP Supplement No. 8 which is an outline of the determination of semester clinic grades embodying the formula. The appropriate Paragraph 3 indicates in no uncertain terms that similar standards will be applied to all students whether they are juniors or seniors. A student will not be evaluated on the basis of his experience level, but rather on how well he attains the optimal goal. (Nissle Depn., 98a) Dr. Nissle goes on to explain that Mr. Minye's situation was different because he had two afternoons in Periodontics whereas most other students had one afternoon in Periodontics and three afternoons in Operative Dentistry. (Nissle Depn., 101a) Thus it appears as though Mr. Minye was graded by use of the formula *and* staff evaluation, whereas all others were graded on a formula only. (Nissle Depn., 101a) Thus, Mr. Minye, being the only alleged "special status" student in the summer of 1977 was evaluated differently from his classmates in the summer of 1977 in Periodontics.

51. Contrary to the foregoing testimony in the preceding paragraph, Dr. Nissle indicated that some students in Periodontics in the summer of

1977 were Seniors, some were holdovers just completing work they had started and some were on strict academic probation. (Nissle Depn., 105a, Lines 11-12) This would seem to contradict the testimony that Plaintiff was the only one with special status. (Nissle Depn., 94a) It appears as though Mr. Minye was either in a group of similarly situated students on strict probation or was in a special status peculiarly his own and had a special formula applied to his grading in Periodontics differently than all others.

52. Dr. Nissle indicates that the comparative printout indicated Mr. Minye's final average was 6.8 and that his clinical examination grade was not entered into the computer. (Nissle Depn., 104a) However, when adding in Mr. Minye's score of six on the clinical examination his average was 6.7 which would ordinarily be a D when using the ordinary curving method but the purpose of the staff meeting would be to determine whether it should be a D or an E and the staff resolved that it should be an E (Nissle Depn., 108a-109a) Thus it would appear Mr. Minye failed Periodontics because of his special status and his E grade was ultimately reported to the Executive Committee in conjunction with the Operative Dentistry grade which resulted in his ultimate dismissal despite the fact that he was a student in good standing with a 2.08 grade point which was above the 2.00 gradepoint required. (50a, Interrg. No. 3)

The foregoing rendition of events and circumstances surrounding Mr. Minye during his final months in the University of Michigan School

of Dentistry Program are necessary to point out the substantial genuine issues of material fact raised by the Deposition Testimony, the contradictions between not only Mr. Minye and his instructors, but between instructors themselves, and the arbitrary, discriminatory, retaliatory and outright bad faith practiced by certain members of the staff who directly influenced Mr. Minye's grades submitted to the Executive Committee which ended his career. Certain of the foregoing facts or disputed facts were specifically pointed out to Judge Churchill in Plaintiff's Brief in Support of Plaintiff's Reply to Defendants' Motion for Summary Judgment and all of the remaining facts were available to Judge Churchill in Deposition form at the time of the Hearing of December 22, 1978. There is no denying that an analysis of Depositions, pleadings and exhibits, is tedious, and that was certainly recognized by Judge Churchill. However, complexity and volume cannot justify a failure of justice. The proper approach of Judge Churchill would have been to review the Deposition Testimony, or in the alternative, hold a hearing with representative witnesses who could satisfy the Court that either a genuine issue of material fact existed or did not exist. None of this occurred. Consequently, Mr. Minye was again denied a substantial right to "tell his side of the story" so that the District Court could at least exercise its discretion.

"As the Supreme Court observed in *Adickes -vs- Kress and Company*, the Advisory Committee on the 1963 Amendments to Rule 56 expressly

rejected the idea that subdivision (a) altered the ordinary standards of proof in a Motion for Summary Judgment:

> 'Where the evidentiary matter in support of the Motion does not establish the absence of a genuine issue, Summary Judgment must be denied *even if no opposing evidentiary matter is presented.*'

398 US at 160, 90 S Ct at 1610 (Emphasis in original), quoting Advisory Committee notes on 1963 Amendment to Rule, 56." *Felix -vs- Young*, 536 F 2d 1126 at 1135 (1976). Also see *Poller -vs- Columbia Broadcasting System*, 368 US 464, 82 S Ct 486 (1961).

RELIEF REQUESTED

WHEREFORE, Leslie Minye, the Plaintiff and Appellant herein, respectfully prays that this Honorable Court reverse the Judgment and vacate the Order entered in the United States District Court for the Southern District of Michigan, Eastern Division, and remand for a hearing to determine whether there is any geniune issue of material fact or for Trial.

Respectfully submitted,

STEVEN STELMACH, JR. (P24866)
Attorney for Plaintiff and Appellant
2970 East Big Beaver Rd.
Troy, Michigan 48084
Telephone: (313) 689-5696

Dated: January 4, 1980

APPENDIX I

State of Michigan

ATTORNEY GRIEVANCE COMMISSION

IN RE: DAVID H. FRIED File # 37569

The file involving Leslie Minye was originally opened by one of the partners at another office that we have and was sent to me for handling.

I am at somewhat of a disadvantage in making a full response for the reason that I have no file left other than a few personal notes and a payment schedule, as I received a letter, a photostat of which is attached, whereby I turned over the entire file that I had to Mr. Minye.

Basically, his claim was against the University of Michigan Dental School based on the premise that he had been denied his Constitutional Rights in being expelled from the School while in his senior year.

The facts, by recollection, were that he entered the School, after having majored in German Literature as an undergraduate. He was suspended from class for one semester for failure of certain classes. He was allowed back in School, but then was compelled to work on models, rather than patients, because of questionable methods, techniques and practices. Subsequently, he was dismissed from the School, he filed an "appeal" to the Dean of the University, he was reinstated, allowed to attend the summer semester, failed those courses, and then was removed from the School without the opportunity to return.

It was at this point that the lawsuit was started for him.

Among other things, by way of preliminary discovery, defendant sought information as to what plaintiff had by way of expert testimony. Plaintiff indicated that a classmate's father-in-law, a dentist, looked over some of plaintiff's work, and would testify in his behalf. One evening, I met with the proposed witness, and plaintiff. In talking with him, it was clear that, should he be called as a witness, he would end up hurting plaintiff's case, more than helping him.

We then attempted to find an expert, a dentist, but one not from this area, because of the great influence which the University of Michigan has in this State.

With some contacts, I was able to find a dentist in Maryland, and one in California. Plaintiff interviewed with both. The one in Maryland would not have testified in plaintiff's behalf. The one in California ultimately indicated that he would.

It should be pointed out that the testimony that would be used from this expert would be testimony that we would need in our case in chief for the purpose of proving, or attempting to prove, the denial of the Constitutional Rights of this plaintiff. It is not, in my judgment, something that is brought out at the time of initial discovery, but is rather a trial tool and something to be used as a trial tool.

Further, there was the claim by Plaintiff's teachers as to his relationship and conduct with certain patients at the School. An investigator was hired for the purpose of obtaining a statement from patients to see what, factually, they would say as it relates to their

relationship with plaintiff. This was acquired and made part of the file.

Again, from a tactical standpoint, it was my judgment that these people not be brought in during the discovery process, as all it would do would be to alert the defendant and all of the instructors, as to what one of our points of attack would be.

Among other things depositions were taken of virtually all of plaintiff's instructors. In addition, the Assistant Dean of the Dental School deposition was taken. There were a total, apparently, of fifteen (15) depositions taken and these were taken over a period of several days. In addition, plaintiff's deposition was taken and this lasted one complete day.

The case was progressing in an orderly fashion, and plaintiff indicated his unhappiness with the slowness of the progress of the case. A Motion to Advance was filed with the court, and among other things, defendant responded by claiming that the defendant would be filing a Motion for Summary Judgment, and asked the court to withhold ruling on the Motion to Advance until such time as defendant could file its Motion for Summary Judgment.

Defendant did file the Motion for Summary Judgment, a responsive brief was filed, oral argument was had on two separate occasions before the Trial Judge, and, ultimately, the Trial Judge ruled that as a matter of law, there can be no claim brought against a University, that a court does not want to become involved with the internal proceedings of schools and universities.

There is a substantial body of law which substantiates this position. It was plaintiff's claim that

the above may be true, but does not apply when there is invidious discrimination by the school against the student; which would, of course, be a question of fact, and which could only be shown at the time of trial, because it would be for the trier of the fact to make such a determination.

By memory, the Trial Judge did not respond to that part of plaintiff's claim, but merely said that case law is such that courts do not meddle in the internal affairs of universities.

When the Trial Judge rendered his opinion, it was within a matter of days that plaintiff received the letter of dismissal, attached hereto.

Respondent can only reiterate that as a matter of tactic, the disclosure, or reducing to testimony, of the dentist in California was something that should be pursued at the time of trial, rather than in discovery stage. Further, as a matter of tactic, the bringing in of the several witnesses and causing their depositions to be taken, or obtaining affidavits from them, would be erroneous to the case. As a matter of fact, the affidavits which Mr. Minye makes reference to could not be introduced in any event. The only thing which could be done would be to take their depositions, and to have their depositions as a matter of record.

A substantial amount of work was done in behalf of plaintiff. He always seemed pleased, and satisfied, with the work which was done for him by this office. It seems that when the Court of Appeals in Cincinnati sustained the trial court, he felt it necessary to pursue this tact with the Grievance Board. Up until receiving of this Grievance, Mr. Minye has always indicated and stated to me that he felt his case was being handled in an exemplary fashion.

We even had a telephone conversation approximately two months ago, where, again, he stated that he felt that his case had been handled in a proper fashion by this office, that he was unhappy with his new attorneys, and that he switched attorneys at the insistence of his father, who has paid all of his bills as it relates to this litigation, because his father was unhappy with this office for the reason that we didn't spend a sufficient amount of time on the telephone talking with his father.

Whether this is true or not, I cannot state. All I can say is that this was what was said on the telephone.

Leslie Minye has not only been emotionally involved in his lawsuit, which he has a right to be, but, apparently, it has caused him to devote substantially all of his waking hours to finding ways and means by which he is attempting to get back into the University of Michigan Dental School.

I believe there were several opportunities for him to enter other dental schools, which rationally, should have been accepted. Then, the University of Michigan, could have been put behind him. However, he chose, and chooses, to pursue the University of Michigan matter, and those things related to it.

As far as the costs are concerned, I have always given a full and complete breakdown to Leslie Minye. What he fails to state to the Bar Grievance Committee is the cost of the investigation for the taking of statements from the patients, the costs of purchasing the transcripts, and various other miscellaneous costs. Other than the original retainer, my relationship with Mr. Minye from an attorney fee standpoint was that payment would be on an hourly basis, and records

were kept as to the amount of time that was spent on this case. There were close to $5,000.00 in costs which were expended by this office, and for which reimbursement was obtained from Mr. Minye. There were numerous telephone conversations with both, Leslie Minye and his father, which were not even made as part of the time expended on his file.

Respondent states that he acted in a diligent and proper and ethical manner as it relates to the care and treatment and handling of the claim of Leslie Minye and denies any misconduct of any kind.

Respectfully submitted,

/s/ DAVID H. FRIED, P-13709

Dated: November 16, 1979
Detroit, Michigan

APPENDIX J

LETTER

Gentlemen:

Mr. Leslie Minye has asked me to write to you regarding his application for admission with advanced standing to your School.

As you will note in reviewing his transcript, he was dismissed from this School at the end of the first term of his senior year because of E grades in clinical operative dentistry and periodontics. You will note, also, that he repeated the second term of his first year in order to remove a deficiency in oral pathology. Prior to receiving the two E grades in clinical subjects, he

had received a deficiency grade in only one related area, namely, partial denture.

I feel that Mr. Minye's background makes it difficult for him to communicate effectively with people. Furthermore, this lack of communication is to a significant degree responsible for many of his academic problems. He is a complex young man, with many personal concerns regarding his family. To what extent his different personality influences his clinical evaluation I am not sure, but it is my opinion that the potential exists.

I know that Mr. Minye is deeply desirous of becoming a dentist. He tells me that he believes he can put family pressures aside and concentrate on his dental program. It is quite possible that a new environment would be more conducive to his progress. I hope that you will give his application for admission with advanced standing your serious consideration.

Sincerely yours,

Robert E. Doerr, D.D.S.
Associate Dean

RED:cr

APPENDIX K

The American Dental Association

COUNCIL OF
NATIONAL BOARD
OF DENTAL EXAMINERS

presents this certificate to

Leslie Minye

as evidence of satisfactory attainment
in the National Board
Dental Examinations

Marvin E Reyn DDS — CHAIRMAN

Fred Cason — SECRETARY

ISSUED 1977

PART 1

MINYE LESLIE	750462	A75	77	79	86	78	80
	REFERENCE NUMBER	EXAMINATION DATE	ANATOMIC SCIENCES	BIOMED PHYSIOLOGY	MICROBIOLOGY PATHOLOGY	DENTAL ANATOMY	AVERAGE

PLEASE USE THE REFERENCE NUMBER
IN ALL COMMUNICATION WITH THE NATIONAL BOARD

PART 11

77	MICH
GRADUATION	SCHOOL

D76	77	83	75	81	83	81	79	80
EXAMINATION DATE	OPERATIVE DENTISTRY	PHARMACOLOGY	PROSTHODONTICS	ORAL SURGERY ANESTHESIA	ORTHODONTICS PEDODONTICS	ORAL PATH RADIOLOGY	PERIODONTICS	AVERAGE

NATIONAL BOARD OF DENTAL EXAMINERS
211 EAST CHICAGO AVENUE
CHICAGO, ILLINOIS 60611

FINAL REPORT

CANDIDATE HAS PASSED ALL NATIONAL BOARD DENTAL EXAMINATIONS

APPENDIX L

LETTER

KELLY
HEALTH CARE

November 13, 1978

TO WHOM IT MAY CONCERN:

Leslie Minye gave good care and we received several positive comments about his performance. Extremely reliable and we would rehire.

Sincerely,
KELLY HEALTH CARE

/s/ George D. Morin
Nursing Supervisor

GM/ls

APPENDIX M

LETTER

WEST DENTAL LABORATORY
9333 Lilley Rd.
Plymouth, Michigan 48170
Phone 459-7878

Plymouth, April 28, 1979

Sharp Dental Laboratory
3145 Professional Drive
Ann Arbor, Michigan 48103

Gentlemen:

This is a recommendation relative to Mr. Leslie Minye's work experience and performance as a dental technician who is now seeking employment at your laboratory.

Mr. Leslie Minye had worked full time (40 hours or more) in the West Dental Laboratory from October 1977 until April 1979.

Since he was not a certified dental technician per se, we hired him only after he proved to be knowledgeable in our specialty. I soon became aware that he was independently and in an exemplary manner completed the prescriptions for gold and bridge assignments. His work had fully satisfied my doctor clients' desired standards. My clients were faculty members at the University Of Michigan Dental School, or, worked as private practitioners.

It was to my surprise, when Mr. Minye had performed very good work in our laboratory for over one year, that one of my faculty dental clients expressed a sudden dissatisfaction or concern about Mr. Minye's presence or employment in the West Dental Laboratory. The very same issue was expressed to my former colleague, Mr. Cornel Tripon, now a Senior Dental Student.

Knowing Mr. Minye's unfortunate situation and his circumstances thereafter at the dental school, it is my assumption that the associate of my doctor's client, Dr. Kahler, who also was a faculty at the University of Michigan Dental School, could well have instigated or provoked and have such gesture expressed in order to prevent Mr. Minye from further working in the laboratory. I cannot see any other motives, since Mr. Minye had satisfied the very same doctors' demands in the past, and I had already been working for the very same doctors for several years, with complete satisfaction on their part. I saw no reason why Mr. Minye should not continue his good work at our laboratory to my doctor clients; he was organized, very precise and responsible. But when the same faculty

client began returning the completed work, I went over extra carefully on each and every unit. I just could not find and identify anything wrong with them; and I have been in this business for over 20 years now.

These returns eventually became so customary that eventually Mr. Minye himself realized that his presence is gradually causing my business to deteriorate. After I talked this matter over with Mr. Minye, it was his decision then to leave the laboratory and look for other employment.

I want to reemphasize that Mr. Minye had performed very well as a technician in gold and related areas. I am not in the position to comment on Mr. Minye's ability on processing partial and complete dentures, because our laboratory specialized only in gold and bridge work as well as porcelain. We do not accept prescriptions for anything else. At the beginning Mr. Minye told me that his knowledge in these two areas were very limited. (In dental school he was taught only the wax-up part of dentures.)

I most certainly would recommend Mr. Minye for hiring. It depends on your discretion whether Mr. Minye's limited experience would satisfy your needs. Should you need further my assistance, please contact me at your convenience at 459-7878.

Sincerely yours,

WEST DENTAL LABORATORY
9333 Lilley Rd.
Plymouth, Michigan 48170
Phone 459-7878

/s/ Jozsef Lengyel, CDT

CC:JL

APPENDIX N

LETTER

DURANT & DURANT, P.C.
ATTORNEYS AND COUNSELORS
2300 PENOBSCOT BUILDING • DETROIT, MICHIGAN 48226
TELEPHONE 961-6800
April 13, 1979

Mr. Leslie Minye
2200 Fuller, # 604-B
Ann Arbor, MI 48105

Dear Mr. Minye:

You have offered to retain us in connection with the preparation and possible filing of a motion to reconsider in Minye v University of Michigan, et al., No. 77-2421, in the U.S. District Court for the Eastern District of Michigan, Southern Division.

We accept such offer of retainer, subject to the following terms and conditions:

1. You retain and employ us to take such legal action as may, in our judgment, be advisable in your best interests, the right to settle and/or compromise the matter, and the right to institute legal action. It is understood that whenever possible we will consult with you before making such decisions, but we have the right to make them without consulting you if, in our judgment, the situation requires an immediate answer and you are not available.

2. We shall receive as our fee the sum of $3,000.00, payable immediately.

3. No other fee shall be charged by us for our services. However, out-of-pocket costs which we incur on your behalf (including, but not limited to, court costs, discovery costs, reasonable personal travel expenses in connection with your representation, and the costs of any techinical experts or investigators) will be paid for by you within 30 days of being billed therefor, unless we in writing ageree to extend such a period of time. We agree to consult with you before expending any sum over $100.00 on such out-of-pocket costs in this matter.

4. In anticipation of such costs, you agree to pay us in advance the sum of -0- and to maintain a credit balance of this amount with us continually. Any unused portion of this amount at the conclusion of our representation of you in this matter will, of course, be refunded to you.

5. We, in our discretion, may employ medical or other experts, associate counsel, investigators or others, who shall report exclusively to us, and whose fees may be advanced by us and charged against the costs to be paid by you in accordance with the preceding paragraphs.

* * *

7. We shall have the right to withdraw from representation of you in this matter if, in our judgment, you fail to cooperate with us, or fail to pay us either our fee or the out-of-pocket costs which we have incurred on your behalf, in accordance with the provisions of the preceding paragraphs. In such case, the time we have expended in representing you shall be calculated at the rate of $100 per hour; this sum shall be subtracted from the flat fee provided for in Paragraph 2, above; any

balance due us on account of out-of-pocket costs not paid for shall then be subtracted from this result; and the balance, if any, shall be refunded to you.

8. You retain the right to discharge us as your attorneys for any reason whatsoever, at any time. However, if you should do so before we have finished our representation of you in this matter, you agree to pay us in full for all out-of-pocket costs which we have incurred up to that point, plus reasonable costs to be incurred formally to withdraw our appearance on your behalf. In the event that you do discharge us, you agree that no portion of the fee specified in Paragraph 2, above, need be refunded; and if such fee has not been paid for in full, you agree to complete the payment at once.

9. In the event that we either withdraw, or you discharge us, you agree that we shall have a lien upon all papers or property in our possession, no matter of what the nature, until we have been paid in full, both for fees and for out-of-pocket costs.

10. We make no warranties or guaranties or representations concerning the successful termination of this matter, or the successful termination of this matter, or the favorable outcome of any legal action which may be involved, nor do we warrant or guarantee that we will obtain any reimbursement for you. We do, however, agree to act as your attorneys in this matter and to perform, or cause to be performed, to the best of our ability all of the services necessary for your proper representation in this matter.

11. Additional conditions for this retainer are:

At this stage in our attorney/client relationship, we are under no obligation whatsoever beyond the preparation

of the material necessary to file a motion to reconsider the judgment of summary judgment in favor of the defendants in this matter, such motion to be ready on or before April 24, 1979, and a consultation with you concerning the work that has been done on the case by us, and our estimate as to what should be done in the future and how much this will cost. Other than that, we have no obligation whatsoever.

Subject to the foregoing we accept your offer of retainer.

If this letter is in accordance with your understanding of our agreement, I would appreciate it if you would sign where indicated below and return the original to me in the envelope enclosed. The copy of the retainer letter, also enclosed, should be kept by you for your records.

If you have any questions, please contact me as soon as possible.

Sincerely yours,

/s/ Richard Durant

Accepted this 13th day of April, 1979

Leslie Minye
Social Security No.